

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TROY TOD TROSTLE,

Petitioner,

v.

Case No. 1:07-cv-218
Hon. Janet T. Neff

STATE OF MICHIGAN, *et al*,

Respondents.

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ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. This matter is now before the court on petitioner's "motion for default; default judgment; for the failure to make disclosures and abide by court order, the Federal Rules of Civil Procedure and due process" (docket no. 23) and his "motion for sanctions for the failure to make disclosures, abide by court order, the Federal Rules of Civil Procedure, and due process" (docket no. 24).

Default is not available in habeas corpus actions. *See Allen v Perini*, 424 F.2d 134, 138 (6th Cir. 1970). Accordingly, petitioner's motion for entry of default and a default judgment (docket no. 23) is **DENIED**.

Next, petitioner's motion for sanctions is without merit. Respondents filed their response in a timely manner, but apparently failed to serve a copy on petitioner. The certificate of service indicates that on December 10, 2007, respondents' counsel served their response on an individual identified as "Shannon Myers" [no address given]. *See* docket no. 13. Two months later, on February 14, 2008, respondents' counsel served copies of the Notice of Filing Rule 5 Material

and the Index of Record on petitioner at the following address, “234647 Troy Tod Trostle, Grand Rapids Parole Office, State Office Building, 1 Division NW, Grand Rapids, MI 49503.”

Based on this record, it appears that respondents filed a timely response to the amended habeas petition, but failed to serve a copy of the response on petitioner. While respondents’ counsel made an error, their actions are not so egregious as to require an award of sanctions. Accordingly, petitioner’s motion for sanctions (docket no. 24) is **DENIED**.

However, because respondents failed to properly serve a copy of the response on petitioner, **respondents are directed to serve petitioner with a copy of the response (docket no. 13) upon receipt of this order and file a certificate of service in this court.** Petitioner may submit a reply to this court within forty-five days after service of the response. Rule 5(e), Rules Governing Section 2254 Cases in the United States District Courts.

IT IS SO ORDERED.

Dated: August 6, 2008

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge